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C O N F I D E N T I A L SECTION 01 OF 02 BAMAKO 000051

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TAGS: [ECON](#) [EIND](#) [ETRD](#) [EINT](#) [EAGR](#) [ML](#)  
SUBJECT: DOW CHEMICALS V. CHINA: DOW WINS, FOR NOW

REF: A. 07 BAMAKO 1205  
[1](#)B. 08 BAMAKO 243

Classified By: Econ Officer Manoela Borges, Embassy Bamako, for reasons 1.4 (b) and (d).

1.(C) Summary: On January 19, the Malian Supreme Court ruled in favor of Dow Agro Sciences, a division of Dow Chemical, in a trademark infringement case. The ruling reversed an appeals court decision ordering Dow to pay USD 300,000 in damages to the Chinese company against which Dow had brought suit. The Supreme Court remanded the case to the appeals court, which will decide whether to send the case back to the tribunal in which the case was originally heard. Dow's attempt to seek redress in the Malian courts has been a four year long legal battle fraught with allegations that the judges were corrupt. This latest decision could be a product of increased transparency and accountability by Mali's highest court, but is likely the result of political pressure brought to bear on the Malian government to ensure a fair outcome. End Summary.

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Mali's Legal Labyrinth  
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2.(SBU) On January 19, Mali's Supreme Court ruled in favor of Dow Agro Sciences in a trademark infringement case against the Chinese company Daton Trading Enterprises (DET). The court's decision was based on procedural grounds and effectively vacated a prior Bamako appeals court ruling that Dow pay USD 300,000 in damages to DTE. The case was remanded to the appeals court, which must now determine whether to return the case to the lower court in the southern town of Sikasso where the case was initially heard.

3.(SBU) Dow initiated legal proceedings in 2005 after DTE began marketing a copy of Dow's herbicide Gallant Super under the name of Super Gallant with containers and labels that mimicked Dow's product (Ref A). Malian police subsequently seized some of DTE's Super Gallant as evidence, causing DTE to countersue Dow for damages. DTE also filed a complaint against a local Malian businessman in Sikasso who had copied DTE's copy of Dow's herbicide. Police moved within days to arrest the Malian individual and destroy his stocks of counterfeit herbicide.

4.(SBU) Four years later, there is still no decision regarding Dow's original complaint and the case Dow v. DTE remains open at the lower court in Sikasso. The court did, however, toss out DTE's countersuit. DTE then appealed to the Court of Appeals in Bamako, which in December 2006 ordered Dow to pay DTE USD 300,000 in damages. Dow subsequently filed suit in the Supreme Court, arguing that the Bamako Court of Appeals had no standing to hear a case that was still pending in a lower court.

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This Round Goes to Dow

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5.(C) One would hope the Supreme Court's January 19 decision to remand the case back to Sikasso reflected the balanced workings of an independent, transparent judiciary. However, Dow's lawyer and others in Bamako have raised serious concerns about the impartiality of several Supreme Court justices and the notorious influence of less scrupulous Chinese owned companies (Ref. B). Prior to the January 19 decision, the Embassy contacted a number of senior government officials representing the Presidency, the Prime Minister's office, and the Ministry of Justice to let them know the Embassy was closely watching this case and re-transmit the need for an impartial decision. It is unclear whether the Supreme Court arrived at the decision of its own volition, or our outreach effort helped to keep the Supreme Court from veering towards an unfair, and unfortunate, decision. After the decision, Dow's lawyer told the Embassy that he believed the Embassy's communications played an instrumental role.

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Comment: Back to Sikasso

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6.(C) This ruling effectively extends a new lifeline to Dow, which can now hope that it receives a fair hearing in Bamako Court of Appeals. Unfortunately, the Appeals Court is no less impervious to corruption than the country's highest court and the Appeals Court's previous decision to rule on a case that had not even been decided by the lower court in Sikasso - normally a prerequisite for appealing to the

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Appeals circuit in Bamako - would indicate that Dow still has an upward, and perhaps quite long, battle ahead.  
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